

# SPOT COTTON TRADE OF NEW ORLEANS

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## ANSWERS BY THE SPOT COTTON TRADE OF NEW ORLEANS

TO THE

SUGGESTIONS OF THE FEDERAL TRADE COMMISSION  
MADE IN THE REPORT OF THE COMMISSION IN  
RESPONSE TO SENATE RESOLUTION OF  
JUNE 7, 1924, RELATIVE TO

COTTON MERCHANDISING PRACTICES



FEBRUARY 17 (calendar day, FEBRUARY 19), 1925.—Referred to the  
Committee on Printing

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WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1925

SENATE RESOLUTION 343

REPORTED BY MR. RANSDALL

IN THE SENATE OF THE UNITED STATES,  
*February 17 (calendar day, February 19), 1925.*

*Resolved*, That the manuscript entitled "Answers by the spot cotton trade of New Orleans to suggestions of the Federal Trade Commission" be printed as a Senate document.

Attest:

GEORGE A. SANDERSON,  
*Secretary.*

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## SPOT COTTON TRADE OF NEW ORLEANS

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NEW ORLEANS, *February 3, 1925.*

TO THE PRESIDENT AND BOARD OF DIRECTORS OF THE NEW ORLEANS  
COTTON EXCHANGE.

GENTLEMEN: Members of the spot cotton trade call attention to letter of the Federal Trade Commission, sent to the United States Senate in reference to cotton merchandising practices, on the 20th of January, in response to Senate Resolution 252 of June 7, 1924.

Whatever may be the true intent of the commission, their method of treating the questions which they have propounded to themselves is in our judgment unfair and calculated to prejudice the minds of producers against handlers of their merchandise without due and sufficient cause.

In so far as the New Orleans market is concerned, as will be seen by appended answers, practically all of the suggestions of the Federal Trade Commission are met by State law or rules of the New Orleans Cotton Exchange. This with one or two exceptions, which are shown to be impractical or unnecessary.

We feel that a great injustice has been done by the Federal Trade Commission to the cotton trade at large, and especially the New Orleans market, in giving undue weight and prominence to so-called practices which do not exist and are amply provided against by necessary laws or regulations.

For these reasons, it is respectfully suggested that your board protest against the Federal Trade Commission's method of investigations and that our Senators and Members in Congress be earnestly requested to advocate the passage of a law that will require the commission to give full hearing to business interests before, instead of after, issuance of public complaint or the assumption of complaint by the commission.

We request that copy of the following answers accompany your letter of protest to our Senators and Members of Congress with request that the same publicity be given to said answers in the Congressional Record or otherwise as was accorded to the Federal Trade Commission letter.

Respectfully,

(Signed by members of the Spot Cotton Trade of New Orleans.)

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NEW ORLEANS, *February 3, 1925.*

Answers by the spot cotton trade of New Orleans to suggestions of the Federal Trade Commission, as contained in said commission's letter of January 20, 1925, in reference to Senate Resolution 252 of June 7, 1924:

Suggestion 1: The cotton exchanges should adopt rules whereby the consignee is forbidden to sell cotton to himself or any organization in

which he is financially interested. If this be deemed too drastic, he should be forbidden to do so without the express consent of the consignor.

Answer to suggestion 1: The general law as stated in 31, CYC, page 1434, prohibits any factor or agent buying property consigned to him, viz:

As a general rule, it is a breach of good faith and loyalty to his principal for an agent, while the agency exists, so to deal with the subject matter thereof, or with information acquired during the course of the agency, as to make a profit out of it for himself in excess of his lawful compensation; and if he does so, he may be held as a trustee and may be compelled to account to his principal for all profits, advantages, rights, or privileges acquired by him in such dealings, whether in performance or in violation of his duties, and be required to transfer them to his principal, upon being reimbursed for his expenditures for the same, unless the principal has consented to ratify the transaction, with knowledge that a benefit or profit would accrue or had accrued to the agent.

In addition, act No. 8 of the Louisiana Legislature of 1918 also prohibits the same, to wit:

That commission merchants are hereby prohibited from charging or deducting commissions on any consignment on any amount except the amount paid by the purchaser of the consigned goods; that when any commission merchant has good and sufficient reasons to refuse a consignment, or claims it seriously damaged, or short, he shall immediately communicate with the consignor, stating reason therefor; that any person who shall misstate the condition of farm products or other products above enumerated or misstate the condition of the market, or any sale made, with intention to defraud, or if any such commission merchant shall take to his own account, or sell to himself or to any firm, partnership, corporation or association, of which he is a part or is agent, or is in any way interested, directly or indirectly, any part of any consignment and such taking to account or sale is made to deceive or defraud the consignor, or to reduce the grade value, or market price of such consignment or any part thereof, off the market temporarily in order to sell to his own advantage and profit, or that of such firm, partnership, corporation or association, he shall be deemed guilty of a misdemeanor and, upon conviction before any court of competent jurisdiction, be sentenced to the parish jail, for not less than 30 days nor more than 6 months and shall be fined not less than \$25 nor more than \$100.

Suggestion No. 2: The exchange should be required to keep records of spot sales, including exact time of all sales, grades, staples, etc., and to provide the necessary mechanism to enable the consignor to compare the price obtained by him on sales to the factor with other sales of cotton of similar character in the same market. Appropriate penalties by way of suspension and expulsion should be provided to enforce these rules. This should, of course, be subject to proper qualifications, permitting the consignee to sell the cotton to himself or to others to protect advances to consignor in the event of a market decline.

Answer to suggestion No. 2: Act 242 of the Louisiana Legislature, passed in 1910, covers this point and reads as follows:

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That it shall be unlawful for any firm, person, corporation or association of persons doing a commission or brokerage business in the State of Louisiana, to render any false statement, or account of sales of any cotton, or other agricultural product, to the shipper of same, or to falsely represent that same is being held for future sale, when in fact the said cotton or other agricultural product, has been sold and only a sample of same retained by the said firm, person, corporation, or association of persons.

SEC. 2. *Be it further enacted*, That whosoever shall sell any cotton or other agricultural product, received on consignment, without rendering to the consignor, within 10 days after delivery, a complete account of such sale, showing the grade, price received, name of purchaser and his post-office address, and



whosoever shall render any account of sales of any cotton or other agricultural product and shall make on same any false charge, or shall make any false statement or report of the condition of any cotton or other agricultural product, or who shall render any account for shortage or make any other false report calculated to deceive the consignor, with intent to defraud, shall be deemed guilty of violation of this act.

SEC. 3. *Be it further enacted*, That any firm, person, corporation or association of persons, violating the provisions of this act shall be deemed guilty of a felony, and shall, upon conviction, be fined in a sum of not less than \$100, nor more than \$1,000, and imprisoned not less than 30 days, nor more than 6 months, at the discretion of the court; the said fine to go one-third to the district attorney and two-thirds to the public-school fund of the parish where the offense was committed.

In addition, act 99 of the Louisiana Legislature of 1900 requires factors, brokers, commission merchants, and middlemen to embody in accounts of sales of sugar, cotton, rice, and other agricultural produce, the name of the person to whom such produce is sold, the date when sold, the actual classification of such produce, and the name of the person by whom such classification was made. For a violation of this statute the person is deemed guilty of a misdemeanor to suffer fine and imprisonment, at the discretion of the court.

In addition, act 206 of the Louisiana Legislature of 1906 requires that the name and address of the purchaser be given in account sales made by commission merchants on all agricultural produce, which seems to be superseded by act 242 of 1910.

In addition, rules 16 and 16-A of the general rules of the New Orleans Cotton Exchange refer to reports of sales of cotton in this market and are quoted as follows:

RULE 16. The committee on spot quotations shall make up quotations of the official spot market of the exchange daily at the closing hour of the future business, which shall be posted promptly in the exchange rooms.

The committee shall quote the grades designated in the official cotton standards of the United States and such other grades as may be necessary to embrace cotton sold in the New Orleans market.

The quotations as a whole shall be based on the closing price of the basis future month. In arriving at value of middling and the differences between middling and other grades above or below middling, the committee shall take into consideration all cotton sold on spot terms, including sales of hedged cotton; and shall also take into consideration cotton to-arrive for prompt shipment, whether sold on description or on actual samples.

The quotation committee may take into consideration bona fide offers and bids. The committee may also disregard any sale which, in their opinion, does not truly represent the market value of the cotton sold.

The spot quotation committee shall state in their report that their quotations are based on the official cotton standards of the United States, and are for short staples or upland cotton.

Information given by buyers or sellers of their daily purchases or sales shall be considered confidential in so far as the names of the parties thereto are concerned.

A representative of the Bureau of Agricultural Economics of the United States Agricultural Department is authorized and requested to participate with the committee on spot quotations in the investigation of evidence and arriving at daily quotations of the New Orleans market, provided that when ever a change of the differences between the grades is under discussion and the spot quotation committee and the representative of the Bureau of Agricultural Economics do not agree, it shall be the duty of said committee to consult the chairman of the committee on supervision and deliveries before any change is made and the chairman of the committee on supervision and deliveries shall thereupon refer the matter to his committee as a whole.

RULE 16-A. It shall be the duty of the members of the exchange to give information to the spot quotation committee in reference to their daily purchases

and sales for delivery in New Orleans, whether on ex-warehouse, to-arrive or cost freight and insurance terms, or otherwise; embracing the number of bales, grades, and prices at which bought or sold. Whether sales are made locally, ex-warehouse, or to-arrive on samples, the seller shall, when called upon, submit the samples of the cotton for inspection by the committee. Failure to comply with this provision shall subject the party so failing to a penalty of \$25 for the first offense and \$100 for each and every subsequent offense.

Suggestion No. 3: The cotton exchanges should require factors to report to their shippers the names of the purchasers of their consignments.

Answer to suggestion No. 3: (See answer to suggestion No. 2.)

Suggestion No. 4: Exchange rules should require the suspension or expulsion of any member not returning the full amount of the sales price, less the proper deductions, to consignor.

Answer to suggestion No. 4: Article 8 of the constitution and article 5 of the by-laws of the New Orleans Cotton Exchange govern members of the New Orleans Cotton Exchange and read as follows:

Article 8 of the constitution (last paragraph only):

Any member of this exchange who shall be accused of wilfully violating the constitution, by-laws, or rules, or of fraudulent breach of contract, or of any proceeding inconsistent with just and equitable principles of trade, or of any other misconduct (with members or nonmembers of this exchange) may, on complaint, be summoned before the committee on membership, when, if desired, he shall be heard in his defense, and if the charge or charges against him be, in the opinion of the committee, substantiated, the complaint shall be referred to the board of directors, who may, by a vote of not less than two-thirds of the entire membership of the board, suspend or expel him from the exchange.

Article 5 of the by-laws:

The committee on membership shall have charge of all applications for membership, for visiting membership, and for powers of attorney, and of charges against members for improper conduct. And it shall be the duty of said committee to make such reports and recommendations on the subjects as they may deem for the interest of the exchange.

Suggestion No. 5: The exchanges and the banks should both adopt rules requiring cotton factors to obtain notes from shippers covering all advances made and further requiring them to present these notes to the banks in applying for all loans secured by consigned cotton.

Answer to suggestion No. 5: While the New Orleans factors would not object to taking notes from shippers, as suggested, they feel that it is impracticable. When would such notes mature? This would require notes for all amounts drawn against the cotton even for the freights paid, which are, of course, advances against the consignment. If a shipper sends, say, 100 bales to a factor he establishes a credit of say \$10,000 and makes draft for his requirements accordingly. It would be as difficult and cumbersome for him to provide notes for such drafts as it would be for a man checking against a credit balance in a bank.

Under the provisions of act 66 of 1874, as amended by act 44 of 1882, it is provided that when any merchant, factor, or other person has advanced money, property, or supplies on cotton or other agricultural products, and the same has been consigned to him, the said agricultural products shall be pledged to the consignee to secure the payment of the advances so made, from the time the bill of lading is put in the possession of the carrier, to be sent to the consignee, and the right of pledge shall be fully vested in the consignee, with the right to appropriate the proceeds of the sale to the payment of the

amount due for such advances as may have been made, provided the factor's lien shall be subordinated to that of the lessor and laborers for wages earned in making the crop.

In addition, all merchants, factors, and others who have a general balance of account, or any sum of money due them by any consignor or person sending them cotton or other agricultural products for sale at the port of New Orleans or any other city in the State for the purpose of paying such balance of account, they shall have a pledge upon all the property so consigned to them in like manner and to the same extent as is conferred upon the person advancing money in aid of growing the crop.

The pledge of cotton-press receipts issued for goods of another is regulated by revised statutes of this State, section 824, reading as follows:

If any commission merchant, agent, or other person storing or shipping any goods, wares, merchandise, grain, flour, or other produce or commodity in his own name, being in the possession thereof for or on account of another party, and negotiating, pledging, or hypothecating the cotton-press receipt or bill of lading received therefor, and not accounting or paying over to his principal or owner of the property the amount so received on such negotiation, pledge, or hypothecation, shall be adjudged guilty of fraud, and upon indictment and conviction thereof shall be fined in a sum not exceeding \$5,000 or imprisoned in the penitentiary of the State for a term not exceeding five years, or both.

The pledge of cotton-press receipts as collateral security is regulated by act 72 of 1876, as amended by act 176 of 1902.

Section 4 provides, in substance, that parties borrowing money on the faith of warehouse receipts shall file their affidavits with the pledgees that such property is theirs, the pledgor's personal property, or that it is the property of some party for whom the pledgor is acting as agent, factor or commission merchant, and that said party is justly and truly indebted unto the pledgor in an amount equal to the value of the property pledged, as specified in the warehouse receipt, for moneys paid to him, or paid by his order and for his account, by the party or consignee making the pledge.

The act provides further, that the cashier of any bank is authorized to administer the oath, and any deviation therefrom shall render the party liable for the value of the property, or any excess over and above the amount for which it may have been pledged, and to prosecution for perjury and also for obtaining money under false pretenses. It is provided, however, that the failure or omission of the borrower or pledgor to make the affidavit shall, in no manner, affect the validity of the pledge, in all cases where the pledgor, at the time of making the pledge, was the owner of the property mentioned or, at the time, had any lien or privilege on the property mentioned in the receipt; the intent being that the pledge of the receipt shall in all cases, notwithstanding the absence of the affidavit, be valid, to the extent of the interest or title which the pledgor had in the property at the time the pledge was given.

The uniform warehouse receipts act, adopted in this State as act 221 of 1908, under section 55, provides as follows:

Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value, with intent to deceive, and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offense, by imprisonment not exceeding one year, or by a fine not exceeding \$1,000.

Suggestion No. 6: That cotton shippers instead of consigning cotton to the factor without reservation, should consign either to themselves or to the factor as agent for themselves. If this were done, persons with whom the bill of lading is negotiated will be on notice that the factor is acting as the agent of the shipper. Banks and cotton exchanges would be performing a real service if they helped to bring this about.

Answer to suggestion No. 6: This would cause accrual of charges and cause delays in deliveries by railroads against consignments being handled promptly and we think therefore unnecessary, inasmuch as the cotton in question would have to be put in the hands of a factor for handling and sale after being received.

Suggestion No. 7: The block receipt for a number of bales of cotton should be abolished and the single bale warehouse receipt adopted in its stead. This form of receipt has been in use successfully at Memphis and also at New Orleans. All the exchanges should adopt this form of warehouse receipt. The banks are in a position to compel its adoption by refusing loans based on block receipts. Each single bale receipt should be required to show the weight of the cotton and, at least in the case of consigned cotton, the grade.

Answer to suggestion No. 7: The individual receipt exclusively is used in New Orleans, which shows the weight of each bale and for a small fee the grade and staple can be obtained from either the New Orleans Cotton Exchange or the Government Board of Cotton Examiners.

Suggestion No. 8: The banks should require that all receipts pledged as collateral and released on a trust receipt be indorsed on the back to that effect, and the exchanges should adopt rules requiring that all receipts carry on the back a form of statement adapted to such an indorsement. This would serve to prevent receipts being pledged more than once.

Answer to suggestion No. 8: This is practically now being done by the New Orleans banks.

Suggestion No. 9: The exchanges and banks should adopt rules requiring that all shipments of consigned cotton be stored in a Federal licensed warehouse or a Federal licensed section of a warehouse and the banks should refuse to loan on consigned cotton unless so stored.

Answer to suggestion No. 9: With two exceptions, all warehouses operating in this city are operated under the Federal warehouse act and all are licensed by the New Orleans Cotton Exchange.

Suggestion No. 10: The exchanges or the banks, or both of them, should adopt one of the following plans:

(a) Guaranty by a surety company of the weight and character of the cotton supporting each receipt.

(b) A custodian system for warehouses under the supervision of the exchange, or the banks, or both, providing for the signing of receipts by the custodian and inspection of warehouses and actual counting of bales.

Answer to suggestion No. 10:

(a) We feel this is unnecessary, and in connection therewith see our answer to suggestion No. 7.



(b) We feel this is unnecessary, and in connection therewith see our answer to suggestion No. 9.

Suggestion No. 11: The uniform receipts act, which is in effect in seven of the cotton States and Virginia, should be adopted by all the cotton States. One provision of this act requires that if a receipt is issued for goods of which the warehouseman is owner either solely or in common with others the extent of his equity must be indicated on the receipt. Violations of this provision of the act should be made punishable by a heavy fine or imprisonment, or both.

Answer to suggestion No. 11: The uniform warehouse act was adopted in Louisiana by Act 221 of the Louisiana Legislature of 1908.

Second suggestion 1: Making it a criminal offense for consignees in the course of interstate or foreign commerce (a) to sell the shipper's cotton to themselves without his express consent; (b) to fail to return or to credit to the shipper within a specified time after the sale is made the full amount of the sales price, less proper deductions, such as commission fee, charges for storage, interest, and insurance.

Answer to second suggestion 1: (a) See our answer to first suggestion 1. (b) See our answer to first suggestion 2.

Second suggestion 2: Requiring consignees to obtain from shippers notes covering the amounts of all advances on cotton shipped or to be sold or shipped in interstate or foreign commerce.

Answer to second suggestion 2: See our answer to first suggestion 5.

Second suggestion 3: Requiring all cotton warehouses licensed under the Federal warehouse act to use uniform single bale receipts with a form on the reverse side which, when filled out, will show that the receipt in question has been pledged and is released under a trust receipt.

Answer to second suggestion 3: See our answer to first suggestion 7 and first suggestion 2.

Second suggestion 4: Requiring all shipments of consigned cotton in the course of interstate and foreign commerce to be stored in a Federal licensed warehouse or Federal licensed section of a warehouse. Warehouses licensed either in whole or in part under the Federal warehouse act are so numerous and widely distributed that such a requirement is not onerous.

Answer to second suggestion 4: See our answer to first suggestion 9.



